

"Agremax"/ AES**Issue:**

The widespread land placement of "Agremax," an aggregate made of ash generated by the AES coal fired power plant in Guayama, Puerto Rico and sold as a "product" under a PR Environmental Quality Board (EQB) beneficial use determination, may present significant environmental and health risks from leaching heavy metals.

Ex. 5 - Deliberative

Background:

Our analysis of Agremax by the EPA Leaching Environmental Assessment Framework (i.e., EPA Method 1313 at: http://www.epa.gov/osw/hazard/testmethods/sw846/new_meth.htm) reveals that Agremax leaches several heavy metals, including arsenic, a known human carcinogen, well above health based standards. Similar leaching was also demonstrated by AES's own analyses by the EPA Toxicity Characteristic Leaching Procedure.

In September 2012, the environmental group Public Justice issued a notice of intent to sue AES under RCRA §7002 (Attachment A), and issued an addendum to the notice in February 2013 (Attachment B), but has since delayed filing a formal lawsuit. EPA shares Public Justice's concerns. The notice of intent to sue quotes extensively from EPA's November 2011 letter to EQB Chairman Nieves, which requested reconsideration of the EQB beneficial use determination that provides the solid waste exemption for Agremax, to incorporate, among other things, risk evaluation and engineering controls. In a January 2012 reply, Chairman Nieves stated that EQB was developing draft guidelines for the use of Agremax. EPA responded in February 2012, indicating that we remained concerned with the ongoing beneficial use of Agremax in the absence of appropriate engineering controls. EQB subsequently provided to EPA the draft guidelines to review, and EPA provided comments in a July 2012 letter. EPA later spoke with EQB Chairman Nieves who informed EPA that our comments, along with others received from the public and regulated community, were being evaluated by an independent committee and could not be reviewed by EQB until the committee's review was completed. Chairman Nieves did not, however, know when this would occur.

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Attachments:

A) Public Justice Notice of Intent to Sue letter